

ASSEMBLY BILL

No. 2100

Introduced by Assembly Member Laird

February 17, 2006

An act to amend Sections 1365 and 1365.2.5 of, and to add Sections 1365.4 and 1365.6 to, the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 2100, as introduced, Laird. Common interest developments: reserve funding.

(1) Existing law requires the association of a common interest development to prepare and distribute to all members a pro forma operating budget that includes, among other things, a statement regarding the mechanism or mechanisms by which the board of directors will fund reserves to repair or replace major components and a statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components that the association is obligated to maintain.

This bill would require the pro forma operating budget to also include a statement as to whether the board of directors of the association has determined to defer or not undertake repairs or replacement of any major component and whether the association has any outstanding loans, as specified. The bill would require, commencing January 1, 2009, the board of directors of the association to adopt a reserve plan that is sufficient to meet the association's obligation for the repair and replacement of all major components, as specified. The bill would require a summary of the reserve plan to be included in the pro forma operating budget distributed to all members.

(2) Existing law requires the association of a common interest development to distribute a disclosure regarding assessment and reserve funding in a certain form.

This bill would revise that form, as specified.

(3) Existing law imposes extensive fiscal duties on the board of directors of the association of a common interest development, including, among other things, preparation of the pro forma operating budget described above, collection of assessments, and accounting of association expenses.

This bill would require any member of the board of directors of the association to disqualify himself or herself from making, participating in the making of, or attempting to influence any decisions of the board or a committee of the board with respect to a contract or transaction in which he or she has a material financial interest, as specified, and would specify applicable procedures in the event one or more board members has a material financial interest in a contract or other transaction involving the association.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1365 of the Civil Code is amended to
2 read:

3 1365. Unless the governing documents impose more stringent
4 standards, the association shall prepare and distribute to all of its
5 members the following documents:

6 (a) A pro forma operating budget, which shall include all of
7 the following:

8 (1) The estimated revenue and expenses on an accrual basis.

9 (2) A summary of the association's reserves based upon the
10 most recent review or study conducted pursuant to Section
11 1365.5, based only on assets held in cash or cash equivalents,
12 which shall be printed in boldface type and include all of the
13 following:

14 (A) The current estimated replacement cost, estimated
15 remaining life, and estimated useful life of each major
16 component.

17 (B) As of the end of the fiscal year for which the study is
18 prepared:

1 (i) The current estimate of the amount of cash reserves
2 necessary to repair, replace, restore, or maintain the major
3 components.

4 (ii) The current amount of accumulated cash reserves actually
5 set aside to repair, replace, restore, or maintain major
6 components.

7 (iii) If applicable, the amount of funds received from either a
8 compensatory damage award or settlement to an association from
9 any person or entity for injuries to property, real or personal,
10 arising out of any construction or design defects, and the
11 expenditure or disposition of funds, including the amounts
12 expended for the direct and indirect costs of repair of
13 construction or design defects. These amounts shall be reported
14 at the end of the fiscal year for which the study is prepared as
15 separate line items under cash reserves pursuant to clause (ii).
16 Instead of complying with the requirements set forth in this
17 clause, an association that is obligated to issue a review of their
18 financial statement pursuant to subdivision (b) may include in the
19 review a statement containing all of the information required by
20 this clause.

21 (C) The percentage that the amount determined for purposes
22 of clause (ii) of subparagraph (B) equals the amount determined
23 for purposes of clause (i) of subparagraph (B).

24 (3) A statement as to ~~both~~ all of the following:

25 (A) *Whether the board of directors of the association has*
26 *determined to defer or not undertake repairs or replacement of*
27 *any major component with a remaining life of 30 years or less.*

28 (B) Whether the board of directors of the association has
29 determined or anticipates that the levy of one or more special
30 assessments will be required to repair, replace, or restore any
31 major component or to provide adequate reserves therefor. If so,
32 the statement shall also set out the estimated amount,
33 commencement date, and duration of the assessment.

34 ~~(B)~~

35 (C) The mechanism or mechanisms by which the board of
36 directors will fund reserves to repair or replace major
37 components, including assessments, borrowing, use of other
38 assets, deferral of selected replacement or repairs, or alternative
39 mechanisms.

1 (D) *Whether the association has any outstanding loans with*
2 *an original term of more than one year, including the payee,*
3 *interest rate, amount outstanding, annual payment, and when the*
4 *loan is scheduled to be retired.*

5 (4) A general statement addressing the procedures used for the
6 calculation and establishment of those reserves to defray the
7 future repair, replacement, or additions to those major
8 components that the association is obligated to maintain. The
9 report shall include, but need not be limited to, reserve
10 calculations made using the formula described in paragraph (4)
11 of subdivision (b) of Section 1365.2.5, and may not assume a rate
12 of return on cash reserves in excess of 2 percent above the
13 discount rate published by the Federal Reserve Bank of San
14 Francisco at the time the calculation was made.

15 The summary of the association's reserves disclosed pursuant
16 to paragraph (2) shall not be admissible in evidence to show
17 improper financial management of an association, provided that
18 other relevant and competent evidence of the financial condition
19 of the association is not made inadmissible by this provision.

20 Notwithstanding a contrary provision in the governing
21 documents, a copy of the operating budget shall be annually
22 distributed not less than 30 days nor more than 90 days prior to
23 the beginning of the association's fiscal year.

24 (b) *Commencing January 1, 2009, a summary of the reserve*
25 *plan adopted by the board of directors of the association, as*
26 *specified in Section 1365.4.*

27 (c) A review of the financial statement of the association shall
28 be prepared in accordance with generally accepted accounting
29 principles by a licensee of the California Board of Accountancy
30 for any fiscal year in which the gross income to the association
31 exceeds seventy-five thousand dollars (\$75,000). A copy of the
32 review of the financial statement shall be distributed within 120
33 days after the close of each fiscal year.

34 ~~(e)~~

35 (d) Instead of the distribution of the pro forma operating
36 budget required by subdivision (a), the board of directors may
37 elect to distribute a summary of the pro forma operating budget
38 to all of its members with a written notice that the pro forma
39 operating budget is available at the business office of the
40 association or at another suitable location within the boundaries

1 of the development, and that copies will be provided upon
2 request and at the expense of the association. If any member
3 requests that a copy of the pro forma operating budget required
4 by subdivision (a) be mailed to the member, the association shall
5 provide the copy to the member by first-class United States mail
6 at the expense of the association and delivered within five days.
7 The written notice that is distributed to each of the association
8 members shall be in at least 10-point boldface type on the front
9 page of the summary of the budget.

10 ~~(d)~~

11 (e) A statement describing the association's policies and
12 practices in enforcing lien rights or other legal remedies for
13 default in payment of its assessments against its members shall
14 be annually delivered to the members not less than 30 days nor
15 more than 90 days immediately preceding the beginning of the
16 association's fiscal year.

17 ~~(e)~~

18 (f) (1) A summary of the association's property, general
19 liability, earthquake, flood, and fidelity insurance policies, which
20 shall be distributed not less than 30 days nor more than 90 days
21 preceding the beginning of the association's fiscal year, that
22 includes all of the following information about each policy:

23 (A) The name of the insurer.

24 (B) The type of insurance.

25 (C) The policy limits of the insurance.

26 (D) The amount of deductibles, if any.

27 (2) The association shall, as soon as reasonably practicable,
28 notify its members by first-class mail if any of the policies
29 described in paragraph (1) have lapsed, been canceled, and are
30 not immediately renewed, restored, or replaced, or if there is a
31 significant change, such as a reduction in coverage or limits or an
32 increase in the deductible, as to any of those policies. If the
33 association receives any notice of nonrenewal of a policy
34 described in paragraph (1), the association shall immediately
35 notify its members if replacement coverage will not be in effect
36 by the date the existing coverage will lapse.

37 (3) To the extent that any of the information required to be
38 disclosed pursuant to paragraph (1) is specified in the insurance
39 policy declaration page, the association may meet its obligation

1 to disclose that information by making copies of that page and
2 distributing it to all of its members.

3 (4) The summary distributed pursuant to paragraph (1) shall
4 contain, in at least 10-point boldface type, the following
5 statement: “This summary of the association’s policies of
6 insurance provides only certain information, as required by
7 subdivision~~(e)~~ (f) of Section 1365 of the Civil Code, and should
8 not be considered a substitute for the complete policy terms and
9 conditions contained in the actual policies of insurance. Any
10 association member may, upon request and provision of
11 reasonable notice, review the association’s insurance policies
12 and, upon request and payment of reasonable duplication
13 charges, obtain copies of those policies. Although the association
14 maintains the policies of insurance specified in this summary, the
15 association’s policies of insurance may not cover your property,
16 including personal property or, real property improvements to or
17 around your dwelling, or personal injuries or other losses that
18 occur within or around your dwelling. Even if a loss is covered,
19 you may nevertheless be responsible for paying all or a portion of
20 any deductible that applies. Association members should consult
21 with their individual insurance broker or agent for appropriate
22 additional coverage.”

23 SEC. 2. Section 1365.2.5 of the Civil Code is amended to
24 read:

25 1365.2.5. (a) The disclosures required by this article in
26 regard to an association or a property shall be summarized on the
27 following form:

28
29 Assessment and Reserve Funding Disclosure Summary
30

31 (1) The current *regular* assessment per ~~unit~~ *ownership interest* is \$_____ per
32 _____.

33 Note: If assessments vary by the size or type of ~~unit~~ *ownership interest*,
34 the assessment applicable to this ~~unit~~ *ownership interest* may be found on
35 page _____ of the attached ~~report~~ *summary*.

36 (2) Additional *regular* or *special* assessments that have already been
37 scheduled to be imposed
38 or charged, regardless of the purpose, if they have been approved by the

board and/or members:

Date assessment is will be due:	Amount per unit ownership interest per month or year (If assessments are variable, see note immediately below):	Purpose of the assessment:
	Total:	

Note: If assessments vary by the size or type of ~~unit~~ ownership interest, the assessment applicable to this ~~unit~~ ownership interest may be found on page ____ of the attached report.

- (3) Based upon the most recent reserve study and other information available to the board of directors, will currently projected reserve account balances be sufficient at the end of each year to meet the association's obligation for repair and/or replacement of major components during the next 30 years?
Yes _____ No _____
- (4) If the answer to (3) is no, what additional assessments or other contributions to reserves would be necessary to ensure that sufficient reserve funds will be available each year during the next 30 years *that have not yet been approved by the board or the members?*

Approximate date assessment will be due:	Amount per unit ownership interest per month or year:
	Total:

- (5) ~~The following~~ All major components, ~~which~~ are included in the reserve

study, ~~are NOT included in the existing reserve funding; and are included in its calculations.~~

Major component:	Useful remaining life in years:	Reason this major component was not included:

- (6) As of the last reserve study or update, the current balance in the reserve fund is \$_____. Based on the method of calculation in paragraph (4) of subdivision (b) of Section 1365.2.5, the required amount in the reserve fund is \$_____, and if an alternate, but generally accepted, method of calculation is also used, the required amount is \$_____. (See attached explanation)

NOTE: The financial representations set forth in this summary are based on the best estimates of the preparer at that time. The estimates are subject to change.

(b) For the purposes of preparing a summary pursuant to this section:

(1) “Estimated remaining useful life” means the time reasonably calculated to remain before a major component will require replacement.

(2) “Major component” has the meaning used in Section 1365.5. Components with an estimated remaining useful life of more than 30 years may be included in a study as a capital asset or disregarded from the reserve calculation, so long as the decision is revealed in the reserve study report and reported in the Assessment and Reserve Funding Disclosure Summary.

(3) The form set out in subdivision (a) shall accompany each pro forma operating budget or summary thereof that is delivered pursuant to this article. The form may be supplemented or

1 modified to clarify the information delivered, so long as the
2 minimum information set out in subdivision (a) is provided.

3 (4) For the purpose of the report and summary, the amount of
4 reserves needed to be accumulated for a component at a given
5 time shall be computed as the current cost of replacement or
6 repair multiplied by the number of years the component has been
7 in service divided by the useful life of the component. This shall
8 not be construed to require the board to fund reserves in
9 accordance with this calculation.

10 SEC. 3. Section 1365.4 is added to the Civil Code, to read:

11 1365.4. (a) The board of directors of the association, acting
12 as a fiduciary, shall adopt a reserve plan that is sufficient to meet
13 the association's obligation for the repair and replacement of all
14 major components with an expected remaining life of 30 years or
15 less, not including those components that the board has
16 determined will not be replaced or repaired. The plan shall
17 include a schedule of the date and amount of any change in
18 regular or special assessments that would be needed to fund the
19 reserve plan. The board shall revise the reserve plan every three
20 years, based on the study required in subdivision (e) of Section
21 1365.5.

22 (b) The board of directors shall place the reserve plan before
23 the membership for approval by a majority vote, unless the
24 governing documents require a more stringent standard, if either
25 of the following apply:

26 (1) The membership has not previously approved the plan.

27 (2) A revised plan would increase total regular and special
28 assessments over the 30 years by more than 5 percent as
29 compared to the plan previously approved by the membership.

30 (c) This section shall become operative on January 1, 2009.

31 SEC. 4. Section 1365.6 is added to the Civil Code, to read:

32 1365.6. Any member of the board of directors of the
33 association shall disqualify himself or herself from making,
34 participating in the making of, or attempting to influence any
35 decisions of the board or a committee of the board with respect to
36 a contract or transaction in which he or she has a material
37 financial interest, as that term is used in Section 310 of the
38 Corporations Code. In the event one or more board members has
39 a material financial interest in a contract or other transaction

- 1 involving the association, the provisions of Section 310 of the
- 2 Corporations Code shall apply.

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